

Fees -- Preamble

Subpart G - Fees

This portion of subpart G sets forth the regulations on fees and other charges to be assessed for accreditation and certification services under the National Organic Program (NOP). These regulations address the kinds of fees and charges to be assessed by the U.S. Department of Agriculture (USDA) for the accreditation of certifying agents, the level of such fees and charges, and the payment of such fees and charges. These regulations also address general requirements to be met by certifying agents in assessing fees and other charges for the certification of producers and handlers as certified organic operations. Finally, these regulations address the Secretary's oversight of a certifying agent's fees and charges for certification services.

Description of Regulation

Fees and Other Charges for Accreditation

Fees and other charges will be assessed and collected from applicants for initial accreditation and accredited certifying agents submitting annual reports or seeking renewal of accreditation. Such fees will be equal as nearly as may be to the cost of the accreditation services rendered under these regulations. Fees-for-service will be based on the time required to render the service provided calculated to the nearest 15-minute period. Activities to be billed on the basis of time used include the review of applications and accompanying documents and information, evaluator travel, the conduct of on-site evaluations, review of annual reports and updated documents and information, and the preparation of reports and any other documents in connection with the performance of service. The hourly rate will be the same as that charged by the Agricultural Marketing Service (AMS), through its Quality System Certification Program, to certification bodies requesting conformity assessment to the International Organization for Standardization "General Requirements for Bodies Operating Product Certification Systems" (ISO Guide 65).

Applicants for initial accreditation and accredited certifying agents submitting annual reports or seeking renewal of accreditation during the first 18 months following the effective date of subpart F will receive service without incurring an hourly charge for such service.

Applicants for initial accreditation and renewal of accreditation must pay at the time of application, effective 18 months following the effective date of subpart F, a nonrefundable fee of \$500.00. This fee will be applied to the applicant's fees-for-service account.

When service is requested at a place so distant from the evaluator's headquarters that a total of one-half hour or more is required for the evaluator(s) to travel to such a place and back to the headquarters or from a place of prior assignment on circuitous routing requiring a total of one-half hour or more to travel to the next place of assignment on the circuitous routing, the charge for such service will include all applicable travel charges. Travel charges may include a mileage charge administratively determined by USDA, travel tolls, or, when the travel is made by public transportation (including hired vehicles), a fee equal to the actual cost thereof. If the service is provided on a circuitous routing, the travel charges will be prorated among all the applicants and certifying agents furnished the service involved. Travel charges will become effective for all applicants for initial accreditation and accredited certifying agents on the effective date of subpart F. The applicant or certifying agent will not be charged a new mileage rate without notification before the service is rendered.

When service is requested at a place away from the evaluator's headquarters, the fee for

such service shall include a per diem charge if the employee(s) performing the service is paid per diem in accordance with existing travel regulations. Per diem charges to applicants and certifying agents will cover the same period of time for which the evaluator(s) receives per diem reimbursement. The per diem rate will be administratively determined by USDA. Per diem charges shall become effective for all applicants for initial accreditation and accredited certifying agents on the effective date of subpart F. The applicant or certifying agent will not be charged a new per diem rate without notification before the service is rendered.

When costs, other than fees-for-service, travel charges, and per diem charges, are associated with providing the services, the applicant or certifying agent will be charged for these costs. Such costs include but are not limited to equipment rental, photocopying, delivery, facsimile, telephone, or translation charges incurred in association with accreditation services. The amount of the costs charged will be determined administratively by USDA. Such costs will become effective for all applicants for initial accreditation and accredited certifying agents on the effective date of subpart F.

Payment of Fees and Other Charges

Applicants for initial accreditation and renewal of accreditation must remit the nonrefundable fee along with their application. Remittance must be made payable to the Agricultural Marketing Service, USDA, and mailed to: Program Manager, USDA-AMS-TMP-NOP, Room 2945-South Building, P.O. Box 96456, Washington, DC 20090-6456 or such other address as required by the Program Manager. All other payments for fees and other charges must be received by the due date shown on the bill for collection, made payable to the Agricultural Marketing Service, USDA, and mailed to the address provided on the bill for collection. The Administrator will assess interest, penalties, and administrative costs on debts not paid by the due date shown on a bill for collection and collect delinquent debts or refer such debts to the Department of Justice for litigation.

Fees and Other Charges for Certification

Fees charged by a certifying agent must be reasonable, and a certifying agent may charge applicants for certification and certified production and handling operations only those fees and charges that it has filed with the Administrator. The certifying agent must provide each applicant with an estimate of the total cost of certification and an estimate of the annual cost of updating the certification. The certifying agent may require applicants for certification to pay at the time of application a nonrefundable fee that must be applied to the applicant's fees-for-service account. A certifying agent may set the nonrefundable portion of certification fees; however, the nonrefundable portion of certification fees must be explained in the fee schedule submitted to the Administrator. The fee schedule must explain what fee amounts are nonrefundable and at what stage during the certification process the respective fees become nonrefundable. The certifying agent must provide all persons inquiring about the application process with a copy of its fee schedule.

Fees - Changes Based on Comments

This subpart differs from the proposal in the following respects:

Nonrefundable Portion of Certification Fees. Commenters were not satisfied with the provision in section 205.642 that stated, "The certifying agent may require applicants for certification to pay at the time of application a nonrefundable fee of no more than \$250.00, which shall be applied to the applicant's fee for service account." Some commenters believed we were requiring the certifying agents to bill fees for inspection services separately. One State agency expressed a concern that we were placing a limit on the initial fee the certifying

agent could collect. As a result, the State agency commented that by not being allowed to collect the full certification fee at the time of application, the certifying agent, in effect, would be extending credit to the applicant. Commenters reported that some State agencies are prevented by statute from extending credit and are required to collect all fees at the time of application. Several commenters stated that the amount of \$250.00 was too low and would not cover the costs the certifying agents could incur during the certification process. One organization noted that we should consider prorating the amount of the fee to be refunded when an applicant for certification withdraws before the completion of the certification process. The organization recommended that the amount of the prorated fee should be based on how far along in the certification process the applicant had progressed before withdrawal. Another commenter believed it was inappropriate for USDA to set any fees for private certification programs and that the fees should be market driven.

It was not our intent to limit the initial amount that certifying agents could collect from the applicant for certification. Our intent was to limit the portion of the fee that would be nonrefundable in order to reduce the potential liability for the small producer/handler who may need to withdraw prematurely from the certification process. However, we acknowledge that this provision could be misinterpreted. We also realize that certifying agents may incur initial costs during the preliminary stage of the certification process that may be more or less than the \$250.00 application rate proposed. As a result, we have removed the provision that stated certifying agents could collect a nonrefundable fee of not more than \$250.00 at the time of application from applicants for certification.

Certifying agents may set the nonrefundable portion of their certification fees. However, the nonrefundable portion of their certification fees must be explained in the fee schedule submitted to the Administrator. The fee schedule must explain what fee amounts are nonrefundable and at what stage during the certification process the respective fees become nonrefundable. Certifying agents will also provide all persons inquiring about the application process with a copy of its fee schedule.

Fees - Changes Requested But Not Made

This subpart retains from the proposed rule regulations on which we received comments as follows:

(1) Farm Subsidy/Transition Program. Many commenters asked that USDA subsidize or develop a cost-share program for small farmers/producers who are certified or who are in transition to organic farming. Some commenters wanted these costs to be fully subsidized; a few commenters suggested that USDA pay for any extra site visit costs; and many others wanted USDA to pay premium prices to farmers for their products during the period of transition to organic production. In addition, many commenters argued that USDA should fully fund certification costs. Finally, many commenters suggested that the USDA should provide additional financial support to the organic industry because the industry is relatively young and composed of a large number of small, low-resource businesses.

We have considered the commenters requests but have not made the suggested changes. The NOP under AMS is primarily a user-fee-based Federal program. Section 2107(a)(10) of the Organic Food Production Act of 1990 (OFPA) requires that the NOP provide for the collection of reasonable fees from producers, certifying agents, and handlers who participate in activities to certify, produce, or handle agricultural products as organically produced. Therefore, under the statutory authority of OFPA, it is outside of the scope of the NOP to provide for the subsidization of producers, handlers, and certifying agents as desired by some commenters. We have, however, established provisions in this part that we believe will

minimize the economic impact of the NOP on producers, handlers, and certifying agents.

(2) Small Farmer Exemption Versus Lower Certification Fees. Many commenters suggested that certification fees be lowered or based on a sliding scale rather than instituting an exemption from certification for small farmers and handlers.

We have not accepted the commenters' suggestion. We cannot remove the small farmer exemption because section 2106(d) of the Act requires that small farmers be provided an exemption from organic certification if they sell no more than \$5,000 annually in value of agricultural products. Also, certification fees cannot be lowered by USDA because NOP under AMS is primarily a user-fee-based Federal agency. It is not our goal or objective to make a profit on our accreditation activities. However, our fees associated with the accreditation process are targeted toward recovering costs incurred during the accreditation process. Commenters expressed a concern that the accreditation fees charged by USDA would have an impact on the certification fees prescribed by certifying agents to operations seeking organic certification. We understand the commenters' concern that accreditation fees charged to certifying agents will most likely be calculated into the fees that certifiers charge their clients. However, we believe that our provision to waive the hourly service charges for accreditation during the first 18 months of implementation of the NOP should help reduce accreditation costs of the certifying agent and should, therefore, result lower certification fee charged by certifying agents. As provided by the Act and the regulations in this part, fees charged by certifying agents must be reasonable. Also, certifying agents must submit their fee schedule to the Administrator and may only charge those fees and charges filed with the Administrator. In addition, certifiers are required to provide their approved fee schedules to applicants for certification. Therefore, applicants for certification will be able to base their selection of a certifying agent on price if they choose. Moreover, there are no provisions in the regulations that preclude certifying agents from pricing their services on a sliding scale, as long as their fees are consistent and nondiscriminatory and are approved during the accreditation process.

(3) Accreditation Fees. Many industry commenters suggested that we reevaluate our accreditation fee structure. They believe the hourly accreditation rate proposed is unacceptable. Commenters were concerned that high accreditation costs would lead to high certification costs, which would have a greater impact on small operations. Some industry commenters also noted that we should be required to provide a fee schedule such as the certifiers are required to do. They stated that unless USDA provided a fee schedule that included travel costs, they would not be able to accurately budget for these costs. A few commenters wanted USDA to forgo charging travel costs or not charge travel time at the full rate. Several commenters also stated that the hourly rate stated in the proposal is much higher than what the people who actually perform the accreditations will earn. However, a large majority of the commenters favored the 18-month period in which AMS will not charge the hourly accreditation rate to applicants.

As stated in the proposal, the hourly rate will be the same as that of AMS' Quality Systems Certification Program. Due to the fact that AMS' Quality Systems Certification Program publishes one rate that is readily available to the public, it is our belief that it is unnecessary for the NOP to set up a separate fee schedule. The NOP will notify accredited certifying agents and applicants for accreditation of any proposed rate changes and final actions on such rates by AMS. We will also periodically report the status of fees to the National Organic Standards Board.

Those applicants and certifying agents who need accreditation cost estimates, including travel, for budgetary or other reasons may notify the NOP. The NOP staff will provide the applicant with a cost estimate, based on information provided by the applicant. As stated in an earlier response ((2) - Changes Requested But Not Made), the objective of the fee that is

charged to accredit certifying agents is not to gain a profit for accreditation activities but to recover costs incurred during the accreditation process. As such, these costs include but are not limited to salaries, benefits, clerical help, equipment, supplies, etc.